

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 310 of 2007
AND
FIRST APPEAL No. 311 of 2007**

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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**STATE OF GUJARAT & 1 - Appellants
Versus**

HARIVADA SOMNATH & 1 - Respondents

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Appearance :

MS TANUJA N.KACHCHHI, AGP, for Appellants

MR AMIT C NANAVATI for claimant.

None for Respondent : 1.2.1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 01/02/2007

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

ADMITTED. Mr.Amit C.Nanavati, learned Counsel, waives service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ["the Act" for short] read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common award dated November 30, 2004, rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R) Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Cases No. 498 & 499 of 1999, by which the claimants have been awarded additional amount of compensation at the rate of Rs.21.60 Ps.per sq.mt. for their acquired lands, over and above the compensation awarded to them at the rate of Rs. 1.65 ps. per sq.mt. for irrigated lands and Rs.1.10 ps. for non-irrigated lands by the Special Land Acquisition Officer vide award dated April 20, 1998.

3. A proposal was received from the Executive Engineer, Narmada Project Goraiya Branch Canal to acquire Survey Nos. 498 & 499 of village Detroj, Taluka : Viramgam, District : Ahmedabad, for the public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Detroj as mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on July 27, 1995. The landowners were served with the notices under Section 4(1) of the Act and they had filed their objections against the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On considering the said report, the State Government was satisfied that Survey Nos. 498 & 499 of village

Detrojs were needed for the public purpose of construction of canal under Narmada Project. Therefore, a declaration under Section 6 was made, which was published in the Official Gazette on February 13, 1996. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 25/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated April 20, 1998 offered compensation to the claimants at the rate of Rs. 1.65 ps. per sq.mt. for irrigated lands and Rs. 1.10 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made to them by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of

determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos.498/99 and 499/99.

4. On behalf of the claimants, Mr.Harivadan Somnath Barot was examined at Exh.20. The witness mentioned in his testimony that the lands acquired were highly fertile and that the claimants were raising different crops, such as cumin-seeds, cotton, raida, wheat, millet etc. thereon. According to the said witness, after deducting the costs of cultivation, the claimants were earning income of Rs. 20,000/- to Rs. 25,000/- per bigha per year from the sale of agricultural produces. The witness mentioned that earlier also adjoining lands from this very village were acquired for the public purpose of construction of canal and therein the Reference Court had awarded compensation to the claimants at the rate of Rs.18/- per sq.mt. and as the

lands, which were previously acquired, were similar to the lands acquired in the instant case, the claimants would be entitled to enhanced compensation on the basis of the previous award of the Reference Court. The witness produced previous award of the Reference Court relating to the lands of this very village at Exh.16. Though this witness was cross-examined on behalf of the acquiring-authorities, nothing substantial could be elicited, nor assertion made by the witness that the lands, which were previously acquired from this very village were similar, in all respects, to the lands acquired in the instant case, could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Ambalal Bechardas Patel, who was then discharging duties as Deputy Executive Engineer, was examined at Exh.52. In his examination-in-chief, the witness maintained that all the relevant factors were taken into consideration by the Special Land Acquisition Officer while

determining the amount of compensation payable to the claimants and, therefore, the claimants were not entitled to enhanced compensation. However, he admitted that earlier also lands were acquired from village Detroj and that the Reference Court had awarded compensation to the claimants at the rate of Rs.18/- per sq.mt. which award was confirmed by the High Court. It was also admitted by him that the lands, which were previously acquired, were similar, in all respects, to the lands acquired in the instant case.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village, was relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said previous award, the Reference Court has awarded additional amount of compensation to the claimants at the

rate of Rs.21.60 ps. per sq.mt. by the impugned award, giving rise to the above-numbered appeals.

7. This Court has heard Ms.Tanuja N.Kachchhi, learned Assistant Government Pleader for the appellants, and Mr. Amit C.Nanavati, learned Counsel for the claimants in both the appeals, at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court. It is true that the witness for the claimants could not make his claim good that each claimant was earning Rs.20,000/- to Rs.25,000/- per bigha per year from the sale of agricultural produces. However, there is no manner of doubt that the lands acquired were highly fertile and that different crops were being raised by the claimants thereon. This becomes evident if one peruses the contents of Exhs.14 & 15, which are 7/12 Extracts relating to the lands acquired in the instant case. The

record does not indicate that the claimants had claimed enhanced compensation on the basis of comparable sale instances, nor the record indicates that enhanced compensation was claimed by the claimants on yield basis. What was relied on by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands acquired from this very village, which was produced at Exh.16. A perusal of Exh.16 indicates that lands of village Detroj were acquired for the public purpose of construction of Goraiya Branch Canal under the Narmada Project, pursuant to notification issued under Section 4(1) of the Act, which was published in the Official Gazette on April 26, 1993. Therein, the Special Land Acquisition Officer by his award dated March 19, 1996 had awarded compensation to the claimants at the rate of Rs. 1.65 ps. per sq.mt. for irrigated lands and Rs.1.10 ps. for non-irrigated lands. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to

the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Cases No. 2206/1996 to 2223/1996. In those cases, on behalf of the claimants, witness Gandabhai Keshavbhai Patel was examined at Exh.31; whereas on behalf of the acquiring authorities, witness Dahyabhai Naranbhai Patel was examined at Exh.64. On appreciation of evidence adduced by the parties, the Reference Court by judgment and award dated November 3, 1999 held that the claimants were entitled to additional amount of compensation at the rate of Rs.18/- per sq.mt. over and above the compensation awarded to the claimants by the Special Land Acquisition Officer. Exh.17 is judgment of the High Court rendered in First Appeal Nos.4587 to 4603 of 2001. It indicates that those appeals were dismissed by a Division Bench of this Court by judgment dated October 15, 2001 and the award rendered in Land Acquisition Case Nos. 2206 to 2223 of 1996 was confirmed. It is well-settled that previous award of the Reference Court relating to the lands of a

village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining market value of similar lands acquired from the same village subsequently. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on Exh.16 for the purpose of determining market value of the lands acquired in the instant case. On reappraisal of evidence adduced by the parties, this Court finds that correct findings of facts have been recorded by the Reference Court to which well-settled principles of law have been applied. The learned Assistant Government Pleader for the appellants could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced by the parties. Therefore, the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, both the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.]

[SMT.ABHILASHA KUMARI, J.]

(patel)